

SENSITIVE

FEDERAL ELECTION
COMMISSION

BEFORE THE FEDERAL ELECTION COMMISSION

2013 OCT -7 AM 10: 24

2013 OCT -7 AM 10: 21

In the Matter of)

MUR 6799)

Frank Scaturro for Congress and)

Nancy Collier as treasurer,¹)

Frank Scaturro)

MUR 6842)

Frank Scaturro for Congress and)

Nancy Collier as treasurer,)

Frank Scaturro)

CELA
DISMISSAL AND CASE
CLOSURE UNDER THE
ENFORCEMENT PRIORITY
SYSTEM

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include without limitation an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances, or in certain cases where the responses sufficiently rebut the allegations set forth in the complaint, a no reason to believe finding. The Office of General

¹ John F. Craven was the treasurer of record for Frank Scaturro for Congress at the time the Complaint was filed. Nancy Collier is the Committee's current treasurer. *See* Amended Statement of Organization, Frank Scaturro for Congress (June 9, 2014).

Counsel has scored MURs 6799 and 6842 as low-rated matters and has determined that neither should be referred to the Alternative Dispute Resolution Office.²

For the reasons set forth below, the Office of General Counsel recommends that the Commission exercise its prosecutorial discretion to dismiss the allegations that Frank Scaturro for Congress and Nancy Collier in her official capacity as treasurer (collectively the "Committee") failed to include the appropriate disclaimers on its flyers, email communications, and website as required under 52 U.S.C. § 30120(a).³ The Office of General Counsel also recommends that the Commission find no reason to believe that Frank Scaturro violated the Act and Commission regulations.

I. FACTS

A. MUR 6799

Complainant Avi Z. Fertig alleges that the Committee violated the disclaimer provisions of the Act and Commission regulations with respect to seven communications produced and distributed during the 2014 election cycle.⁴ The Complaint first alleges that the Committee produced and distributed an email, sent March 7, 2014 ("March 7th Email"), and an announcement on the Committee's website ("Website Announcement"), which lacked

² MUR 6799 and MUR 6842 raise similar claims against the same respondents regarding activities that occurred during the same election cycle. Accordingly, the Office of General Counsel has elected to address the two matters concurrently.

The EPS rating information for MUR 6799 is as follows:
2014. Response Filed: May 14, 2014.

Complaint Filed: March 21,

The EPS rating information for MUR 6842 is as follows:
2014. Response Filed: Aug. 7, 2014.

Complaint Filed: June 18,

³ The Committee is the principal campaign committee for Frank Scaturro, a 2014 candidate for New York's Fourth Congressional District.

⁴ See 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11.

proper disclaimers. Compl. at 1, Ex. A; Supp. Compl. at 1, Ex. B (Mar. 24, 2014) ("1st Supp. Compl."). The March 7th Email appears to be an invitation to a fundraiser, sent with the subject line, "Invitation: March 19th Spring Gala Fundraiser for Frank Scaturro." Compl. at Ex. A. The body of the email contains information about the fundraiser and includes the candidate's logo, website URL, and, at the bottom, the words "Frank Scaturro for Congress" alongside the Committee's address. *Id.* The Website Announcement is a combination of text and graphics displayed on the Committee's website that similarly invited viewers to the March 19th fundraiser. 1st Supp. Compl. at Ex. B. A printout of the website shows a graphic reading "Frank for Congress" at the top, followed by a second graphic with information about the fundraiser, text about how to donate to the Committee, and an interactive feature that allowed visitors to RSVP to the fundraiser. *Id.* The very bottom of the website contains a printed box containing the words "Paid for by Frank Scaturro for Congress, Inc." *Id.*

Complainant further alleges that the Committee produced and distributed a second email, sent March 18, 2014 ("March 18th Email"), and four printed flyers that lacked proper disclaimers. 1st Supp. Compl. at 1, Ex. A; Supp. Compl. at 1, Exs. A-D (Apr. 1, 2014) ("2nd Supp. Compl."). The Complainant asserts that both the March 7th and March 18th emails were sent to more than 500 individuals, though he does not provide any documentation that supports this allegation. Compl. at 1; 1st Supp. at 1. The March 18th Email appears to be another invitation to the March 19, 2014 fundraiser, containing a graphic with information about the event. 1st Supp. Compl. at Ex. A. The graphic contains the text "Paid for by Frank Scaturro for Congress" at the bottom, and although the text is offset from the rest of the invitation, it is not contained within a printed box. *Id.* The four flyers, which advertise a volunteer opportunity, a March 27, 2014 fundraiser, or an open house at the Committee's

1 headquarters, all contain the words "Paid for by Frank Scaturro for Congress" at the bottom in
2 a contrasting color. 2nd Supp. Compl. at Exs. A-D. However, the text is not contained within
3 a printed box. *Id.*

4 Respondents concede that the March 7th Email lacked a disclaimer, stating that the
5 Committee had paid for the communication, but argue that the content and circumstances of
6 the communication made it clear to the public that Respondents had authorized and paid for
7 the communication. Resp. at 2. Respondents note that the email, which was an invitation to a
8 fundraiser for Scaturro's campaign, contained the Committee's logo, included the URL of the
9 Committee's website, and provided the Committee's name and mailing address. *Id.*

10 Respondents also do not dispute that disclaimers on the March 18th Email and four
11 other flyers were not contained within a printed box, but argue that such a complaint "elevates
12 form over substance," and that the disclaimers clearly identified who approved and paid for
13 the communications. *Id.* at 3. They note that the disclaimers, all of which read "Paid for by
14 Frank Scaturro for Congress," otherwise meet Commission specifications, containing the
15 appropriate language, appearing in sufficient size and color contrast, and standing alone from
16 other text and graphics. *Id.* at 3-4.

17 With respect to the Website Announcement, Respondents dispute the fact that a
18 disclaimer was not included, since a compliant disclaimer was present at the bottom of the
19 website. *Id.* at 2-3.

1 **B. MUR 6842**

2 Complainant Theresa Gaffney does not address the same communications raised in
3 MUR 6799, but instead points to a separate mailing ("Mailing"), which she alleges was
4 produced and distributed by the Committee without a disclaimer. Compl. at 1. Ex. A. The
5 Mailing, a copy of which is included with the Complaint, is a photocopy of a handwritten
6 letter on what appears to be the Committee's letterhead. Compl. at Ex. A. The Mailing is a
7 first-person letter advocating for Scaturro's election, apparently signed by Scaturro himself.
8 *Id.* The letter does not contain a disclaimer. *Id.* Complainant Gaffney asserts that Scaturro,
9 who has sought election to Congress three times, is an experienced candidate who should
10 "know federal election law by both chapter, line and verse." *Id.* at 1. She states that
11 Scaturro's failure to comply despite such experience demonstrates that he is "willfully
12 violating" the Act. *Id.*

13 Respondents do not dispute that the Mailing lacked a disclaimer, but rather assert that
14 the content and circumstances surrounding the communication clearly show that the
15 Respondents had authorized and paid for the letter. Resp. at 2. Respondents also note that the
16 Mailing was on campaign letterhead, and was handwritten and signed by Scaturro himself.
17 *Id.* at 2. Further, Respondents contend that the error was not willful, as alleged, but rather a
18 mistake on the part of committee volunteers. *Id.* Respondents state that the campaign
19 realized, within three days of the initial mailing, that the letter lacked a proper disclaimer.
20 Thereafter, the Respondents sent out another set of letters, which contained the "paid for"
21 language required under the Act. *Id.* at 2, Ex. A.

II. LEGAL ANALYSIS

A political committee that makes an expenditure for a public communication must include a disclaimer stating that the Committee paid for and authorized the communication. 52 U.S.C. § 30120(a); *see also* 11 C.F.R. § 110.11(a)(1) and (b)(1). A public communication is “a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising.” 52 U.S.C. § 30101(22); *see also* 11 C.F.R. § 100.26. The same requirement applies when a political committee makes expenditures for more than 500 substantially similar email communications or Internet websites of the committee that are available to the general public. 11 C.F.R. § 110.11(a)(1) and (b)(1). The Commission has established specifications for the content and appearance of all disclaimers. *See* 11 C.F.R. § 110.11(b)-(c). Communications paid for and authorized by a candidate’s authorized committee must clearly state that the committee paid for it. 11 C.F.R. § 110.11(b)(1). Additionally, the Commission has set forth technical requirements concerning all printed communications containing a disclaimer. These requirements include: the disclaimer must be of sufficient type size to be clearly readable by the recipient, be contained in a printed box set apart from the other contents of the communication, and be printed with a reasonable degree of color contrast between the background and the text. 11 C.F.R. § 110.11(c)(2)(i)-(iii).

It appears that the Committee failed to affix appropriate disclaimers on its March 7th Email and the Mailing by not including a statement that the communication was authorized and paid for by the Committee. However, the communications contained information identifying them as Scaturro campaign communications and, therefore, were unlikely to have

1 misled the public. Moreover, when the campaign discovered its omission on the Mailing, it
2 promptly remedied the oversight before the Complaint was filed.

3 The exhibits attached to the Complaint indicate that the March 18th Email and four
4 flyers lacked a printed box around the disclaimers. As is the case with the March 7th Email
5 and Mailing, the March 18th Email and flyer communications were unlikely to have misled
6 recipients due to the indentifying information included in the communications. With respect
7 to the Committee's website, it clearly contained a statement that the Committee had paid for
8 the page and there was little ambiguity as to who was responsible for the graphics and
9 announcements that appeared thereon. Finally, evidence suggests that the failure to include a
10 disclaimer on the Mailing was the result of inadvertence on the part of campaign volunteers
11 and there is no available information to indicate that Scaturro knowingly and willfully
12 violated the Act.

13 Accordingly, further Enforcement resources are not warranted in this matter and,
14 consequently, the Office of General Counsel recommends that the Commission exercise its
15 prosecutorial discretion and dismiss the allegation that Scaturro for Congress and Nancy
16 Collier, in her official capacity as treasurer, violated 52 U.S.C. § 30120(a) and 11 C.F.R.
17 § 110.11(a)(1) and (b)(1). *See Heckler v. Chaney*, 470 U.S. 821 (1985). In addition, the
18 Office of General Counsel recommends that the Commission find no reason to believe that
19 Frank Scaturro violated the Act or Commission regulations. Finally, this Office recommends
20 that the Commission approve the attached Factual and Legal Analysis and the appropriate
21 letters and close the file.

1 **III. RECOMMENDATIONS**

- 2
- 3 1. Dismiss the allegation that Scaturro for Congress and Nancy Collier in her official
- 4 capacity as treasurer violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(a)(1),
- 5 (b)(1) and(c)(2)(i)-(iii), as a matter of prosecutorial discretion. *See* Heckler v. Chaney,
- 6 470 U.S. 821 (1985);
- 7
- 8 2. Find no reason to believe the allegation that Frank Scaturro violated the Federal
- 9 Election Campaign Act of 1971, as amended, and Commission regulations;
- 10
- 11 3. Approve the attached Factual and Legal Analysis and the appropriate letters; and
- 12
- 13 4. Close the file.
- 14
- 15

16 Daniel A. Petalas
17 Acting General Counsel

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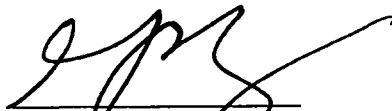
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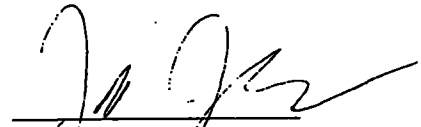
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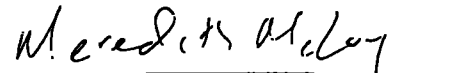
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